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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,323	06/20/2003	Rainer Biro	LZ-75	6976
7590	06/01/2005		EXAMINER	
Friedrich Kueffner Suite 910 317 Madison Avenue New York, NY 10017			NEGRON, ISMAEL	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8/4

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	10/601,323	BIRO, RAINER
	Examiner Ismael Negron	Art Unit 2875

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
  - a)  The period for reply expires 3 months from the mailing date of the final rejection.
  - b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
  - (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: \_\_\_\_\_

Claim(s) withdrawn from consideration: \_\_\_\_\_

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached Response to Arguments.
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13.  Other: \_\_\_\_\_

  
JOHN ANTHONY WARD  
PRIMARY EXAMINER

***Response to Arguments***

1. Applicant's arguments filed May 19, 2005 have been fully considered but they are not persuasive.
2. Regarding the Examiner's rejection of Claim 1 under 35 U.S.C. 103(a) as being unpatentable over different combination of the SHEEKS et al. (U.S. Pat. 1,313,957), or WILKINSON (U.S. Pat. 2,416,558) references, the applicant argues that the Examiner citation of the *In re Gazda* (219 F.2d 449, 104 USPQ 400, CCPA 1955) decision is improper. The applicant argues that facts and decision in *In re Gazda* do not apply to the instant application since the rejection failed to provide a secondary reference disclosing the claimed slidable contact/coil structure. The applicant argues that such secondary reference is a requirement of any rejection based on the cited court decision based on the following court statement (page 402, paragraph 7):

"In similar respect, the showing in Amburgey of a rotatable mounting for a clock wherein winding is effected by movement of the clock parts relative to the stationary member is also important to recognize as affording a clear suggestion."
3. In response to applicant's arguments that the rejections base on *In re Gazda* were improper, the applicant is respectfully advised that rationale to modify the prior art does not have to be specifically stated in the prior art, but that it may be reasoned from legal precedent established by prior case law. See MPEP § 2144.

In this case, as detailed in Sections 2 and 3 of the Final Action mailed February 23, 2005, SHEEKS et al. and WILKINSON both disclose all the limitations of the rejected claim, but the sliding contact being fixed to the housing while the winding is movable. The Court decision in *In re Gazda* itself is what provides the rationale for holding the claimed invention as obvious over the cited references, as reversing the patented sliding contact/winding structure of SHEEKS et al. and WILKINSON would not change the operation of such patented structures. The simplicity of the patented sliding contact/winding structure of SHEEKS et al. and WILKINSON, combined with its old and well status (as evidenced by the relevant art cited in Section 10 of the Office Action mailed October 14, 2004) was considered by The Examiner as sufficient to establish a *prima facie* case of obviousness.

Regarding the statements cited from the *In re Gazda* decision, while it is a fact that the rejection of the subject matter of the claims of Gazda were base on the Whitehead et al (U.S. Pat. 1,946,890) and Amburgey (U.S. Pat. 1,935,760), from close study of the opinion text of the *In re Gazda* decision it is evident that the Amburgey patent was relied on as additional proof of the non-patentability of the rejected claims, and not as the primary source of recognition. In addition, other court decision are cited in *In re Gazda* to support the notion that mere reversal of parts is an obvious expedient (e.g. *In re Einstein*, and *Duner Co. v. Grand RapidsR Co.*).

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negron whose telephone number is (571) 272-2376. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (571) 272-2378. The facsimile machine number for the Art Group is (703) 872-9306.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications maybe obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, go to <http://pair-direct.uspto.gov>. Should you have questions on access to Private PAIR system, contact the Electronic Business Center (EBC) toll-free at 866-217-9197.

✓  
Inr



JOHN ANTHONY WARD  
PRIMARY EXAMINER

May 27, 2005